

# The Chippewa Cree Tribe of the Rocky Boy's Reservation

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31 Agency Square  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment	)	
	)	
Revising the Historic Preservation Review Process	)	WT Docket No. 15-180
for Wireless Facility Deployments	)	

COMMENTS OF:

Chippewa Cree Tribe

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April 13, 2017

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, D.C., 20554  
Via: ECFS

Dear Ms. Dortch,

**RE: WT Docket No. 17-79 Seeking comments on notice of proposed rulemaking and notice of inquiry accelerating wireless broadband deployment by removing barriers to infrastructure investment, WT Docket No. 15-180 seeking comment on proposed rulemaking and notice of inquiry on revising the historic preservation review process for wireless facility deployments.**

Thank you for the opportunity to submit comments on the Notice of Proposed Rulemaking and Notice of Inquiry released by the Wireless Telecommunications Bureau of the Federal Communications Commission ("Communication") on the accelerating wireless broadband deployment by removing barriers to infrastructure investment and revising the historic preservation review process for wireless facility deployments.

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation ("CCT") has reviewed and considered the proposed rulemaking, the removal of barriers to infrastructure investment, and the revisions of the historic preservation review process for wireless deployments and offers these comments to assist and improve the process.

## **BACKGROUND-**

The Chippewa Cree Tribe, like many federally recognized tribes, has a documented history of traditional use and occupation across lands that today fall within multiple states.

Colonial expansion and population growth in the eastern woodlands resulted in migration of the Chippewa and Ojibwa peoples westward, in search of a secure location in which to raise their families and provide for their people. Oral history states that a prophecy followed by the grandfather of the modern reservation's namesake, Rocky Boy, directed the leaders of the ancestral band of Ojibwa to travel to the "backbone of the earth" to seek survival. This term is recognized as a traditional name for the Rocky Mountain range, synonyms of which are used not only by other Algonquian-speaking groups such as the Cree and Blackfoot, but also Salishan and Kootenai-speaking groups native to the region. Travel to this area from ancestral homelands in present-day Pennsylvania occurred over several generations, and resulted in settlement with Cree bands that also resided traditionally in the area. The combined Chippewa Cree Tribal Reservation is now one of seven American Indian reservations in the present-day State of Montana.

To address the historic preservation needs of the reservation community on both on- and off-reservation federal trust lands in addition to ancestral homelands across the federally-recognized historical range of the tribe, the Chippewa Cree Tribal Business Committee as the governing body of the Tribe established the Chippewa Cree Cultural Resources Preservation Department (CCCRPD) by resolution. CCCRPD houses the Tribal Historic Preservation Officer (THPO) in addition to an Archaeology Department and Section 106 Compliance review staff. CCCRPD has established a strong reputation within the

national THPO community and amongst federal agencies as an effective and innovative program. Not only does the CCCRPD meet the high-level of demand placed on THPO and tribal cultural resource programs to engage in federal consultation, but has exceeded expectations and risen to the standard of many industry partners by developing and utilizing an online consultation management database.

The Chippewa Cree Tribe works with a variety of federal agencies on small and large projects in the compliance of federal laws and regulations, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA) and the National Environmental Preservation Act (NEPA). Our Tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Over the past 13 years, we have worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities, including micro cell tower siting, through the TCNS Program. The Chippewa Cree Tribe provides prompt response to cell tower notifications. When any situation arises using the TCNS Program, tribes have been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G technology by the wireless telecommunications industry we can see the benefits of modernizing the existing TCNS system to meet the needs of all parties. The Chippewa Cree

Tribe has encountered many of the same issues in working with the telecommunication industry such as the lack of a timely response, failure to provide adequate information, disregard for Tribes as governmental entities, disregard for the Section 106 process, and the failure to pay for services rendered.

The Chippewa Cree Tribe works through the iResponse database processing service website. Since April 2014, the CCCRPD has responded to over 8,150 projects through this database service. Of these, 8,074 projects originated through the TCNS system. The use of iResponse database has allowed the CCCRPD to respond to consultation requests in a timely manner, facilitating the expedient deployment of new telecommunications system. With the database and TCNS process, the CCCRPD can provide transparency and accountability for tribal monitoring work by creating deliverables for the telecommunication industry.

#### **COMMENTS-**

The Chippewa Cree Tribe has been using the TCNS system for several years and the experience has been favorable in that we are able to have direct access to information regarding proposed projects and are able to be a part of the planning process.

Using the TCNS system allowed the CCCRPD's THPO to have an impact on various projects that would potentially threaten historical and culturally significant areas for the Chippewa Cree Tribe. One example involved a project in Eastern Montana, the proposed project involved the construction of a communication tower. The effectiveness of the system has allowed the relocation of proposed sites to avoid cell tower placement the THPO has identified as a cultural concern. We are concerned by the industry's comments asserting

there is low or non-existent “adverse effect findings”, we strongly disagree with this acer. There have been numerous examples by THPOs that demonstrate the TCNS program is doing exactly what it was designed to do which is to lessen the likelihood of an “adverse effect” by working closely with the Industry’s consultants or tower construction companies to amend their project plans. It is uncertain if these changes are tracked by the TCNS system. As a recommendation the FCC should consider and review the system and add a tracking feature to enhance the process so when such changes are done by the applicant it is reflective as “amended” in the completion of the application for the Section 106 review process for the FCC approval. Often when a proposed project is a new telecommunications tower and the “Finding of Adverse Effect” was issued by the THPO, despite the findings of no property by a “cultural consultant”. A pedestrian cultural survey was conducted on the proposed site and multiple tipi rings, rock cairns, and gravesite were located on the property. Due to the findings, the project was mitigated quickly by moving the project site 150 feet from the original.

Tribal Historic Preservation Officers (THPO) are separate for each Tribal nation with each being governed by the laws of their nation. The State Historic Preservation Officer (SHPO) should not be mistaken for THPO being that the focus and duties are different for each tribal nation and each state. The SHPO play a critical role carrying out many responsibilities in historic preservation. Surveying, evaluating and nominating significant historic buildings, sites, structures, districts and objects to the National Register is one such key activity.<sup>1</sup> The Traditional Ecological Knowledge (“TEK”) is unique and not taught within western

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<sup>1</sup> <https://www.nps.gov/nr/shpolist.htm>

educational systems and must be considered within Section 106 review process. In reviewing archeological reports, it is apparent that Tribal TEK is not a factor and needs to be included in the consideration.

### **BATCHING-**

The use of batching is becoming prevalent in the TCNS process for 5G deployment.

However, Tribes have not been properly consulted on the batching method. Whether the batching is for small-cell deployment or DAS nodes it warrants further discussion if an amendment will be considered to the National Programmatic Agreement ("NPA"). The CCCRPD THPO is not opposed to the discussion on the use of batching in regards to small cell deployment and DAS nodes but we want clarification on the definition of what is a batch and a small cell deployment.

Subject to further understanding we want to discuss a new fee structure predicated on how the infrastructure will be deployed, we agree the current macro-cell reviews are different and are open to a discussion of reasonable appropriate fee structure for the review of the new 5G infrastructure. Through proper consultation, Tribes can work with industry to create a reasonable fee structure for Section 106 review.

Another proposed change would be to review the FCC Form 620 and 621, which is completed by the applicants and the information provided is not complete or needs updating. As tribal entities the information is not adequate and we request additional information or clarification which can cause delays for tribal determination on projects. The Chippewa Cree Tribe uses iResponse database to assist with Section 106 review process and it can track delays for 30, 60 and 90 days, the delays have been attributed to



lack of information received from industry on projects.

The Chippewa Cree Tribe suggests the FCC review the TCNS process to track instances where Tribes have asked the project applicant for additional data to complete a timely review which can cause delays. Through the changes and growth of the wireless broadband and small cell deployment the Chippewa Cree Tribe is prepared to change and adapt to meet the needs of infrastructure deployment and adhere to the Section 106 process and not be a hinderance for the growth of 5G wireless spectrum across the country.

The iResponse online platform enables a “shop clock” for each application review for the CCCRPD, unless there are projects where the consultants have provided incomplete information.

#### **CONCLUSION-**

The Chippewa Cree Tribe is in support of the growth of the wireless infrastructure and welcomes the opportunities that this will bring to the Tribe and our people. However, we reiterate our stand as a sovereign nation to be properly consulted on a government to government basis. Preservation of Tribal historical properties and the survival of Section 106 process is important to the Chippewa Cree Tribe’s future.

Thank you for your consideration of these comments.



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CC: Bambi Kraus, President, National Association of Tribal Historic Preservation Officers